



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2004

Ms. Myrna S. Reingold
Galveston County Legal Department
123 Rosenberg, Suite 4127
Galveston, Texas 77550-1454

OR2004-2041

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198506.

The Galveston County Sheriff's Department (the "department") received two requests for information. In the first request, the requestor seeks two reports. In the second request, the requestor seeks the same two reports and also a third report. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117 and 552.130 of the Government Code. Furthermore, you inform this office that you previously asked for a decision about the first two reports in response to a previous request for information. In Open Records Letter No. 2003-8962 (2003), we concluded that one of the reports, 30083248, is excepted from public disclosure under section 552.101 in conjunction with section 261.201 of the Family Code, and that portions of the other report, 30083284, are excepted from disclosure under section 552.130. As the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the department must withhold the requested information in accordance with Open Records Letter No. 2003-8962.¹

For the third report, 30083074, we consider your claims. You raise section 552.108(a)(2) for a portion of this report. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information you have marked.

You state that you have withheld motor vehicle record information based on section 552.130 and information that relates to the home address and phone number of a peace officer based on section 552.117. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, one of the Texas driver's license numbers in the report is excepted from public disclosure based on section 552.130. However, section 552.130 does not apply to the other Texas driver's license number in the report. The other driver's license number is that of the requestor. Under section 552.023 of the Government Code, the requestor has a special right of access to information that is otherwise private, such as her own driver's license number. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests).

You raise section 552.117 for a peace officer's home address and telephone number. Section 552.117(a)(2) of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a peace officer, as well as information revealing whether the officer has family members. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the submitted offense report is held by the department as a law enforcement entity, not an employer. Consequently, we find that none of the officer's personal information may be withheld under section 552.117(a)(2).

We note, however, that the officer's home address and home telephone number may be protected by section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Thus, if the peace officer elects to restrict access to this information in accordance with this provision, we conclude that the department must withhold the address and telephone number under section 552.1175.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

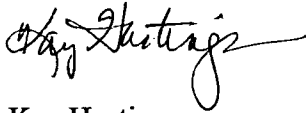
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 198506

Enc: Submitted information

c: Ms. Jackie Quebe
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Santa Fe, Texas 77517
(w/o enclosures)